

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL LEBER, *et al.*,

Plaintiffs,

vs.

BERKLEY VACATION RESORTS, INC., *et al.*,

Defendants.

Case No. 2:08-cv-01752-PMP-PAL

ORDER

The court conducted a status and scheduling conference on July 20, 2010. Leon Greenberg and Dana Sniegocki appeared on behalf of the Plaintiffs, and M. Peebles Harrison and Anthony Martin appeared on behalf of the Defendants.

The notice of conditional certification was mailed and the deadline for Plaintiffs to opt into this FLSA action expired July 12, 2010. 390 Plaintiffs opted into this case. The parties have been discussing electronically stored information ("ESI"), and are in substantial agreement concerning certain categories of ESI which should be produced and certain categories of ESI from Defendants' database which need not be produced. Defense counsel has provided Plaintiff's counsel with a data slice for an individual Plaintiff, and information concerning Defendants' ESI database and the fields of various categories of information captured in the database. The parties have scheduled a "webinar" for July 26, 2010 to familiarize Plaintiffs' counsel and Plaintiffs' consultant with information stored in Defendants' electronic database. Counsel for both sides remain hopeful that they will come to an agreement concerning the appropriate scope of Defendants' ESI production.

The parties have discussed representative discovery from individual opt-in Plaintiffs. Defendants propose to conduct individualized discovery from up to twenty-five percent of a representative sample of the opt-in Plaintiffs. Plaintiffs propose that written and deposition discovery be limited to no more than ten individual opt-in Plaintiffs. During the hearing, counsel for Defendants

1 offered to limit requests for individualized discovery to approximately ten percent of the opt-in
2 Plaintiffs' provided that, for good cause shown, additional discovery be permitted if Defendants'
3 consultants or experts opine ten percent is an insufficient representative sample of the putative class.

4 The parties propose a conditional stay of discovery while they explore mediation. The court
5 canvassed counsel for both sides concerning what information and/or discovery was required in order
6 for the parties to engage in meaningful mediation, and timing of proposed mediation.

7 Counsel for Plaintiffs indicated that, although he was optimistic the parties would reach a
8 resolution concerning ESI, he and his consultants would need to analyze Defendants' ESI to conduct a
9 productive mediation. However, he did not need to take any depositions or engage in formal expert
10 discovery before mediation. Counsel for Defendants indicated that he believed that his in-house
11 evaluation of payroll and related records was sufficient for the parties to engage in meaningful
12 mediation.

13 Plaintiff's counsel has suggested names of two potential mediators, but given their schedule,
14 understands that the earliest a mediation could be scheduled is October. Defense counsel has also been
15 attempting to identify potential mediators, and a time frame for conducting mediation, but has not yet
16 received anything concrete.

17 Finally, the court canvassed counsel concerning the discovery that remains in the event the
18 parties are unable to promptly resolve their disputes in mediation. Counsel for Plaintiffs indicated he
19 believed ninety days from the conclusion of mediation would be required to complete discovery and
20 designate experts. He intends to take three or four depositions of Defendants' management concerning
21 the Defendants' policies. He requests that the court allow forty-five days from the conclusion of any
22 unsuccessful mediation to designate experts. Counsel for Defendants agrees that ninety days should be
23 sufficient to complete discovery provided the parties are able to resolve outstanding ESI issues.
24 Counsel for Defendants anticipates propounding written discovery, taking representative opt-in
25 Plaintiffs depositions, and designating a damages expert if it appears that the parties' damages evaluation
26 are substantially apart.

27 The court will require the parties to continue to meet and confer to resolve their outstanding
28 ESI disputes and set a status conference in approximately two weeks to resolve any unresolved

1 disputes. Additionally, counsel shall to meet and confer in an effort to select a mutually acceptable
2 mediator and to schedule a mediation within a reasonable period of time. The parties will have to
3 satisfy the court that a concrete plan to conduct and complete mediation within a reasonable period of
4 time is in place before approving a conditional stay. If a mediation cannot be scheduled and completed
5 in the near future, the court will enter a final Discovery Plan and Scheduling Order requiring the parties
6 to finalize the discovery to prepare this case for trial.

7 **IT IS ORDERED** a status and dispute resolution hearing is set for **August 5, 2010 at 9:00 a.m.**
8 Counsel for the parties may appear telephonically. Each party requesting to appear telephonically is
9 instructed to call Jeff Miller, Courtroom Deputy, at (702) 464-5420 **before 4:00 p.m., August 4, 2010**
10 to indicate the name of the party participating and a telephone number where that party may be reached.
11 The courtroom deputy will initiate the call.

12 Dated this 21st day of July, 2010.

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14 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE
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